Supreme Court, U.S.
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No. 04- 04 371

IN THE

Supreme Court of the United States

AARON C. JAMES,

Petitioner,

vs.

BOOZ-ALLEN & HAMILTON, INCORPORATED,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

ELAINE CHARLSON BREDEHOFT
Counsel of Record
PETER C. COHEN
CHARLSON BREDEHOFT, P.C.
11260 Roger Bacon Drive
Suite 201
Reston, Virginia 20190
(703) 318-6800

Counsel for Petitioner

189692

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED FOR REVIEW

1. Does a demotion or reassignment that results in a substantial diminishment of material job responsibilities, but is unaccompanied by a reduction in salary or benefits, constitute an "adverse employment action"?

2. Does *Faragher/Ellerth* set forth the standard for "adverse employment actions" in disparate treatment cases?

3. What constitutes an "adverse employment action"?

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The opinion of the United States Court of Appeals for the Fourth Circuit is reported at *James v. Booz-Allen Hamilton, Inc.*, 368 F.3d 371 (4th Cir. 2004) and at 93 Fair Empl. Prac. Cas. (BNA) 1418 (2004) (App. A). The decision of the District Court was issued from the bench on April 4, 2003, and the relevant excerpt and order are attached (App. B & C).

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on May 14, 2004. The Court of Appeals denied a timely petition for rehearing and rehearing en banc on June 15, 2004 (App. D).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This Petition involves the following statutory provisions:

> It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-2(a)(1).

(a) Statement of equal rights

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

> For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

42 U.S.C. § 1981.

STATEMENT OF THE CASE

Aaron C. James suffered a humiliating demotion that stripped him of all his supervisory responsibilities and officially changed his employment status from Project Manager/Director of the largest and most successful project in the history of his employer's Transportation Group to one of many front-line staff engineers providing technical support on the project. Despite the dramatic and significant diminishment in Mr. James' job title and duties, the Court of Appeals held that because Mr. James had received a small

salary increase and a bonus after the reassignment, he did not suffer economic injury, and thus, the reassignment did not result in an adverse employment action.

The Court of Appeals' decision is contrary to three decisions of this Court and conflicts with decisions from four other circuits. In addition, this case presents issues concerning the application of the standards set forth by this Court in *Faragher* and *Ellerth* for "tangible employment actions" to "adverse employment actions" in disparate treatment cases under Title VII, and the ultimate question as to what constitutes an "adverse employment action" in disparate treatment cases – two issues that have divided the circuits.

A. Mr. James Went From Project Manager/Director To A Staff Engineer, A Demotion That Resulted In A Significant Diminishment of Material Job Responsibilities

In 1996, Mr. James was hired by Booz-Allen & Hamilton, Inc. ("BAH") to manage one of its largest projects involving the Washington Metropolitan Area Transit Authority ("WMATA Project"). Mr. James was hired for the Project Manager/Director position because of his vast experience as a transportation engineer and because of his prior work experience with BAH. In addition to his senior level position as Project Manager/Director, Mr. James was hired as a Level 4 Senior Engineer. The next level was Principal, and the level after that, Partner, was the highest level at BAH. Mr. James was on track to becoming a Partner at BAH.

As Project Manager/Director of the WMATA Project, Mr. James reported directly to the head of BAH's Transportation Group, Ghassan Salameh. Mr. James also

supervised 25-30 full-time employees, which was the largest number of employees assigned to a Transportation Group project.[1] The WMATA Project was a huge success under Mr. James' management. During his tenure, the WMATA Project generated annual revenue of $7-10 million and total revenues of $25-30 million, and became the largest contract in the Transportation Group's history, both in terms of revenue and the number of employees assigned to work on the project.[2]

However, in February 1999, BAH suddenly removed Mr. James as the Project Manager/Director of the WMATA Project, and replaced him with a less-qualified white male, Karl Berger.[3] Instead of managing and directing the largest and most lucrative and successful project in the history of the Transportation Group, BAH reassigned Mr. James to be one of twelve staff engineers in the Transportation Group's engineering department. As a staff engineer, Mr. James no longer supervised a staff of 25-30 employees (he no longer supervised any employees) and he no longer reported to the head of the Transportation Group, Mr. Salameh. After the reassignment, Mr. James was made to report to persons whom

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1. The average number of employees assigned to work on other Transportation Group projects was 6 to 12.

2. The average annual revenue for the Transportation Group's other projects was $2-5 million.

3. After three months as Project Manager/Director, Mr. Berger was fired for incompetence. Mr. James contends that the decisions to remove him as Project Manager/Director and replace him with Mr. Berger were impermissibly motivated by his race (African-American). He asserts claims for disparate treatment under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981.

he used to supervise when he was Project Manager/Director of the WMATA Project. In his reassigned role as staff engineer, Mr. James provided technical support for the WMATA Project he once managed, and he no longer participated in management-level meetings concerning the project.

As a result of the reassignment, Mr. James no longer functionally performed Level 4 work, was no longer eligible for future bonuses at that level, and was no longer in a position to advance to the more senior levels of Principal and Partner. In sum, Mr. James had been demoted, and his reassigned duties were qualitatively and significantly different and less prestigious than the duties he had as Project Manager/Director of the WMATA Project. By contrast, Mr. James' successor, Mr. Berger, was given a higher bonus and a higher salary of $125,000 ($25,000 more than Mr. James was paid as Project Manager/Director). In addition, Mr. Berger was provided with significantly more staff than had been given to Mr. James.

The demotion and corresponding loss of supervisor authority, prestige, and future promotional opportunities were devastating to Mr. James, particularly given the success of the WMATA Project under his stewardship. He went from being the Project Manager/Director of the largest and most successful and lucrative Transportation Group project to one of a number of front-line staff engineers providing technical support for the project he once led. He went from the highest management position in the project to a subordinate, non-management technical position; from supervising a staff of 25-30 employees to supervising no employees; from reporting to the leader of the Transportation Group to reporting to former subordinates whom he had once supervised; from

running the entire project (with great success) to performing small engineering tasks for the project. In the process, Mr. James lost the prestigious title of Project Manager/ Director, was stripped of all supervisory authority, and was taken off the promotional track for the most senior level and lucrative positions in the company.

As a result of a demotion that had essentially placed him in a dead-end job, Mr. James' professional reputation both inside and outside of BAH had been damaged. "I just didn't feel productive from that point on . . . I had been placed in a position where there was really no way out." In addition, Mr. James was told by a Vice President and Partner at BAH that, in light of the demotion, Mr. James no longer had a future at the company, and that "between you and me, I would start looking for another job if I was you."[4]

Nevertheless, in demoting Mr. James, BAH did not reduce his salary or benefits. After the demotion, he was given a raise of five-percent, which was much smaller than the raises he would have received had he continued as Project Manager/Director, and was substantially less (by $20,000) than the salary increase given to his successor, Mr. Berger. After the demotion, Mr. James also received a bonus of $15,000, *not* for his work as a staff engineer, but as a reward for the outstanding work he did in his last year as Project Manager/Director of the WMATA Project (a fact ignored by the lower courts). As a staff engineer no longer performing Level 4 work, Mr. James no longer qualified for future bonuses or salary increases at that level.

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4. As a consequence of the humiliating demotion and being told by a BAH Vice President to look elsewhere for a job, Mr. James felt he had no choice but to resign, and contended in the lower courts that he was constructively discharged.

B. The Court of Appeals Held That Mr. James Did Not Suffer An Adverse Employment Action Because The Demotion Did Not Result In Economic Harm To Him

The District Court, against the great weight of the evidence, held that Mr. James had not suffered a demotion at all:

> There was no demotion. There was a transfer of responsibilities. The man's salary was not affected. He received his bonus. He still had professional-level work. He was still, if he wanted to, on track for promotion. There simply is not in the record the adverse action that would satisfy that element.[5]

Given the evidence of a substantial diminishment of Mr. James' duties, whether he was demoted or not presented a clear factual question for a jury. In any event, in its brief analysis of the issue, the District Court evaluated whether Mr. James had suffered an "adverse employment action" in the context of whether economic harm resulted from the "transfer of responsibilities." Concluding that there was no economic harm, the District Court found no adverse employment action.

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5. The District Court issued its summary judgment ruling from the bench, and the excerpt above constitutes the court's entire analysis of the "adverse employment action" issue in this case (App. C). The District Court had jurisdiction over Mr. James' Title VII claim under 42 U.S.C. § 2000e-5(f)(1) & (3) and over Mr. James' section 1981 claim under 28 U.S.C. §§ 1331 & 1343(a).

The Court of Appeals also shied away from referring to what happened to Mr. James as a demotion, calling it a "reassignment" instead. 368 F.3d at 376. The Court of Appeals held that Mr. James did not suffer an adverse employment action because he did not suffer economic harm as a result of the reassignment:

> James retained his position of Senior Associate [Level 4] and received the same pay, benefits, and other terms and conditions of employment. He even received a five-percent raise after the reassignment and a $15,000 bonus, the largest performance bonus he had ever received with BAH.

Id. at 376-77.

Ignoring the significant and qualitative differences between being the Project Manager/Director of the hugely successful and prestigious WMATA Project and being one of numerous staff engineers providing technical support on the project, the Court of Appeals characterized Mr. James' reassigned role as staff engineer as "professional-level work" and as encompassing "a preexisting area of responsibility," and that "success in this area of responsibility would enhance his future chances for promotion." *Id.* at 377. Finding no economic harm to Mr. James, the court thus found no adverse employment action.

Both the District Court and the Court of Appeals disregarded important parts of the factual record that showed that the "reassignment" did inflict economic harm on Mr. James, notwithstanding the small raise and the bonus he received after the reassignment for the earlier work he had

done as a Project Manager/Director. As a result of the reassignment, Mr. James was no longer functionally performing as a Level 4 employee, and thus, was no longer eligible to receive future bonuses at that level. After the reassignment, Mr. James was also no longer in a position to receive salary increases commensurate with that of a Project Manager/Director, as evidenced by the substantial raise that was given to his successor, Mr. Berger. And due to the reassignment, Mr. James was no longer in line to become a Principal or Partner.

Nevertheless, even if we assume for purposes of the instant petition that the Court of Appeals' determination was correct that the "reassignment" resulted in no economic harm to Mr. James, he still suffered an adverse employment action.

REASONS FOR GRANTING THE PETITION

I. THE COURT OF APPEALS HAS DECIDED AN IMPORTANT TITLE VII QUESTION – WHETHER AN ADVERSE EMPLOYMENT ACTION CAN OCCUR IN THE ABSENCE OF ECONOMIC HARM – IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT

The question presented is whether an employee's demotion or reassignment, together with a substantial diminishment of his material job responsibilities, is sufficient to constitute an "adverse employment action," even though the employee did not suffer economic harm as a result of the demotion or reassignment. The Court of Appeals held that Mr. James' "reassignment" did not result in economic harm, and thus, the reassignment was not an adverse employment action.

The Court of Appeals' conclusion, however, conflicts with this Court's decisions in *Faragher v. City of Boca Raton*, 524 U.S. 775, 118 S. Ct. 2275, 141 L. Ed. 2d 662 (1998), *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 118 S. Ct. 2257, 141 L. Ed. 2d 633 (1998), and *Pennsylvania State Police v. Suders*, __ U.S. __, 124 S. Ct. 2342, 159 L. Ed. 2d 204 (2004).

In *Faragher* and *Ellerth*, this Court defined a "tangible employment action" as "a significant change in employment status, such as . . . reassignment with significantly different [job] responsibilities . . . demotion, or undesirable reassignment." *Faragher*, 524 U.S. at 808, 118 S. Ct. at 2293; *Ellerth*, 524 U.S. at 761, 118 S. Ct. at 2268-69 (*citing Crady v. Liberty Nat. Bank & Trust Co. of Ind.*, 993 F.2d 132, 136 (7th Cir. 1993) ("A materially adverse change might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation")).

Although this Court acknowledged in *Ellerth* that in most cases a tangible employment action inflicts economic harm, 524 U.S. at 762, 118 S. Ct. 2269, it did not hold, and has never held, that economic harm is required in all cases. *See Green v. Administrators of the Tulane Educational Fund*, 284 F.3d 642, 654 (5th Cir. 2002) ("While . . . *Ellerth* acknowledged that in most cases a tangible employment action inflicts economic harm, the Supreme Court did not state that loss of an economic benefit was required in all cases"); *Durham Life Ins. Co. v. Evans*, 166 F.3d 139, 153-54 (3rd Cir. 1999) ("Although direct economic harm is an important indicator of a tangible adverse employment action,

it is not the *sine qua non*"); *Jin v. Metro. Life Ins. Co.*, 295 F.3d 335, 346-48 (2nd Cir. 2002) (finding that *Faragher* and *Ellerth* did not mandate direct economic harm as a basis for finding a tangible employment action); *see also Meritor Savings Bank v. Vinson*, 477 U.S. 57, 64, 106 S. Ct. 2399, 2404, 91 L. Ed. 2d 49 (1986) (rejecting the notion that Title VII only applied to overcoming economic barriers).

In Mr. James' case, he was "reassign[ed] with significantly different [job] responsibilities" that resulted in a "significant change in [his] employment." *See* Statement of the Case, section A. Applying the *Faragher/Ellerth* standard, Mr. James plainly suffered an adverse employment action, regardless of whether he suffered economic harm as a result.

The Court of Appeals' contrary conclusion that Mr. James' reassignment did not constitute an adverse employment action also conflicts with this Court's recent pronouncement in *Suders* that a "humiliating demotion" that "officially chang[es] [the plaintiff's] employment status or situation" and results in a constructive discharge constitutes a tangible employment action. 124 S. Ct. at 2347. This standard aptly describes Mr. James' case. He quit in reasonable response to a humiliating demotion that stripped him of all his supervisory responsibilities and officially changed his employment status from Project Manager/ Director of the largest and most successful Transportation Group project in history to one of many front-line staff engineers providing technical support on the project with diminished prospects for bonuses and promotions.[6]

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6. *Suders* was decided on June 14, 2004, a month after the Court of Appeals decided Mr. James' case. Another reason for granting the instant petition is so that the Court of Appeals' decision can be vacated in light of *Suders*.

In sum, the Court of Appeals' conclusion that Mr. James' demotion or reassignment did not constitute an adverse employment action because it did not inflict economic harm conflicts with this Court's definition of a "tangible employment action" in *Faragher* and *Ellerth*, and with this Court's recognition of a "humiliating demotion" as a tangible employment action in *Suders*. Accordingly, Mr. James' petition for writ of certiorari should be granted.

II. THE COURT OF APPEALS' CONCLUSION THAT MR. JAMES DID NOT SUFFER AN ADVERSE EMPLOYMENT ACTION BECAUSE HE DID NOT SUFFER ECONOMIC HARM IS IN CONFLICT WITH THE DECISIONS OF OTHER COURTS OF APPEALS

The Court of Appeals' conclusion that Mr. James' demotion or reassignment did not constitute an adverse employment action because it did not inflict economic harm is in conflict with decisions from at least four other circuits. *See Tart v. Illinois Power Co.*, 366 F.3d 461, 473-76 (7th Cir. 2004) (reassignment of plaintiffs from highly-skilled positions to unskilled subordinate positions found to be adverse employment actions even though plaintiffs retained their salaries and benefits); *Green v. Administrators of Tulane Educational Fund*, 284 F.3d 642, 654-55 (5th Cir. 2002) (change of plaintiff's employment status from office manager to administrative assistant and corresponding reduction of job responsibilities while receiving same salary and benefits constituted adverse employment action); *White v. Burlington Northern & Santa Fe Railway Co.*, 364 F.3d 789, 803 (6th Cir. 2003) (transfer/reassignment of female forklift operator to track laborer job was a demotion that constituted an adverse employment action despite no change in pay);

Rodriguez v. Board of Education, 620 F.2d 362, 364-66 (2nd Cir. 1980) (adverse employment action established where "severe professional . . . trauma" resulted from difference in "the site of [teacher's] work and the age of her pupils" even though the transfer "does not and will not diminish [teacher's] salary [and] does not and will not reduce her benefits").

Mr. James' petition for writ of certiorari should be granted to resolve this conflict, and to clearly articulate the principle that an employee's demotion or reassignment, together with a substantial diminishment of material job responsibilities, is sufficient to constitute an adverse employment action, even if the employee does not suffer economic harm as a result of the demotion or reassignment.

III. THE PETITION SHOULD BE GRANTED IN ORDER TO CLARIFY WHETHER *FARAGHER* AND *ELLERTH* SET FORTH THE STANDARD FOR "ADVERSE EMPLOYMENT ACTIONS" IN DISPARATE TREATMENT CASES

This Court has never explicitly stated what constitutes an adverse employment action in a disparate treatment case.[7] In *Faragher* and *Ellerth*, the Court referred to "tangible employment actions," but the discussion in those cases concerned the types of employment actions that, if taken by a supervisor, would subject the employer to vicarious liability for harassment. Nevertheless, in defining "tangible employment actions," the Court cited circuit-level Title VII disparate treatment cases that defined "adverse employment actions," notably the Seventh Circuit's definition in *Crady*,

7. As a consequence, the circuits are currently split on the issue. *See infra* section IV.

993 F.2d at 136 (quoted above) that included a "materially adverse change" in employment indicated by "a less distinguished title" or "significantly diminished material responsibilities."

Although this Court has never expressly authorized it, several circuits have applied the *Faragher/Ellerth* definition of "tangible employment action" to adverse employment actions in disparate treatment and retaliation cases. *See Shakelford v. Deloitte & Touche*, 190 F.3d 398, 407 (5th Cir. 1999); *White v. Burlington Northern & Santa Fe R. Co.*, 364 F.3d 789, 795 (6th Cir. 2004); *Herrnriter v. Chicago Housing Authority*, 315 F.3d 742, 744 (7th Cir. 2002); *Taylor v. Small*, 350 F.3d 1286, 1293 (D.C. Cir. 2003); *Stinnet v. Safeway, Inc.*, 337 F.3d 1213, 1217 (10th Cir. 2003); *Davis v. Town of Lake Park, Florida*, 245 F.3d 1232, 1239 (11th Cir. 2001).

However, at least one circuit to date has expressly declined to extend the *Faragher/Ellerth* definition of "tangible employment action" beyond the context of supervisory harassment. *See Ray v. Henderson*, 217 F.3d 1234, 1242 n. 5 (9th Cir. 2000) ("[W]e reject the contention that *Burlington Industries* set forth a standard for adverse employment actions in the anti-retaliation context").

It is important to Mr. James' case, as well as to resolve the circuit split caused by the Ninth Circuit's ruling in *Ray*, that this Court state definitively whether the standard for "tangible employment action" set forth in *Faragher* and *Ellerth* applies as well to the concept of "adverse employment action" in disparate treatment cases like Mr. James'. If the answer is yes – that the *Faragher/Ellerth* standard does apply to adverse employment actions in disparate treatment cases

– then, we submit, the Court of Appeals' decision in the instant case should be reversed, or at the very least, vacated, so that the *Faragher/Ellerth* standards of "demotion," "significant change in employment status," "reassignment with significantly different [job] responsibilities," and "undesirable reassignment," as well as the *Suders* standard of "humiliating demotion," can be applied to the facts of Mr. James' case in determining whether he suffered an adverse employment action, which neither the District Court nor the Court of Appeals did.

On the other hand, if the answer to the above question is no – that the Ninth Circuit was right when it stated that the *Faragher/Ellerth* standard for tangible employment actions in supervisory harassment cases does not extend to adverse employment actions in disparate treatment cases – then the issue naturally arises as to what does constitute an "adverse employment action" in the context of disparate treatment cases. This is an issue not only of considerable importance to Mr. James' case and to Title VII jurisprudence generally, but is one of considerable confusion in the circuits, to which we now turn.

IV. THE WRIT SHOULD BE GRANTED TO PROVIDE GUIDANCE TO LOWER COURTS ON WHAT CONSTITUTES AN "ADVERSE EMPLOYMENT ACTION" IN DISPARATE TREATMENT CASES

Several courts and law review articles have documented the split in the circuits as to what constitutes an "adverse employment action," a term that is not defined in Title VII.[8]

Specifically, the First, Seventh, Ninth, Tenth, Eleventh and D.C. Circuits take a more expansive view of the type of actions that can be considered adverse employment actions. *See Wyatt v. City of Boston*, 35 F.3d 13, 15-16 (1st Cir. 1994) (adverse employment actions include "demotions, disadvantageous transfers or assignments, refusals to promote, unwarranted negative job evaluations and toleration of harassment by other employees"); *Knox v. Indiana*, 93

8. *See Ray*, 217 F.3d at 1240-42 (surveying how the circuits have aligned themselves with a broad, restrictive, or intermediate position as to what constitutes an adverse employment action under Title VII – the First, Seventh, Ninth, Tenth, Eleventh, and D.C. Circuits adopting an expansive view of the types of actions that can be considered adverse employment actions, the Fifth and Eighth Circuits adopting a restrictive view, and the Second and Third Circuits adopting an intermediate position); *Islamic Society of Fire Department Personnel*, 205 F.Supp.2d 75, 82-83 & n. 7 (E.D.N.Y. 2002) (same survey of the circuits and citing three law review articles that discuss the circuit split on what constitutes an adverse employment action in disparate treatment and retaliation cases); *see also* Rosalie Berger Levinson, *Parsing the Meaning of "Adverse Employment Action" in Title VII Disparate Treatment, Sexual Harassment, and Retaliation Claims: What Should Be Actionable Wrongdoing*, 56 Okla.L.Rev. 623, 638-55 (2003) ("[T]he circuit courts are divided as to how much harm an employee must endure before claims of disparate treatment and retaliation are actionable").

F.3d 1327, 1334 (7th Cir. 1996) (employer can be liable for retaliation if it permits "actions like moving the person from a spacious, brightly lit office to a dingy closet, depriving the person of previously available support services . . . or cutting off challenging assignments"); *Corneveaux v. CUNA Mutual Ins. Group*, 76 F.3d 1498, 1507 (10th Cir. 1996) (employee demonstrated adverse employment action under the ADEA by showing that her employer "required her to go through several hoops in order to obtain her severance benefits"); *Berry v. Stevinson Chevrolet*, 74 F.3d 980, 986 (10th Cir. 1996) (malicious prosecution by former employer can be adverse employment action); *Wideman v. Wal-Mart Stores, Inc.*, 141 F.3d 1453, 1456 (11th Cir. 1998) (adverse employment actions include an employer requiring plaintiff to work without lunch break, giving her a one-day suspension, soliciting other employees for negative statements about her, changing her schedule without notification, making negative comments about her, and needlessly delaying authorization for medical treatment); *Passer v. American Chemical Soc.*, 935 F.2d 322, 330- 331 (D.C. Cir. 1991) (employer's cancellation of a public event honoring an employee can constitute adverse employment action under the ADEA, which has an anti-retaliation provision parallel to that in Title VII); *Ray*, 217 F.3d at 1240-42.

The Second and Third circuits hold an intermediate position within the circuit split. They have held that an adverse action is something that materially affects the terms and conditions of employment. *See Robinson v. City of Pittsburgh*, 120 F.3d 1286, 1300 (3rd Cir. 1997) ("retaliatory conduct must be serious and tangible enough to alter an employee's compensation, terms, conditions, or privileges of employment . . . to constitute [an] 'adverse employment action'"); *Torres v. Pisano*, 116 F.3d 625, 640 (2nd Cir. 1997)

(to show an adverse employment action employee must demonstrate "a materially adverse change in the terms and conditions of employment").

The Fifth and Eighth Circuits, adopting the most restrictive test, hold that only "ultimate employment actions" such as hiring, firing, promoting and demoting constitute actionable adverse employment actions. *See Mattern v. Eastman Kodak Co.*, 104 F.3d 702, 707 (5th Cir. 1997) (only "ultimate employment decisions" can be adverse employment decisions), applied in *Hernandez v. Crawford Bldg. Material Co.*, 321 F.3d 528, 531-32 (5th Cir. 2003); *Ledergerber v. Stangler*, 122 F.3d 1142, 1144 (8th Cir.1997) (transfer involving only minor changes in working conditions and no reduction in pay or benefits is not an adverse employment action).

What constitutes an "adverse employment action" is at the heart of disparate treatment cases under Title VII, and is at the heart of Mr. James' case. In the absence of concrete guidance, the circuits are divided on the issue. Depending in which circuit a plaintiff's claim arises, varying standards will be applied, with varying and disparate results.

In Mr. James' case, the Court of Appeals held that he suffered no economic harm, and thus no adverse action, despite significant material alterations in his position and duties. Had his claim arose in another circuit, the result would very likely have been different. The instant petition should be granted so that one uniform standard can apply to the concept of adverse employment actions in disparate treatment cases.

CONCLUSION

Petitioner Aaron C. James prays that this Court grant this Petition and issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this matter.

Respectfully submitted,

ELAINE CHARLSON BREDEHOFT
Counsel of Record
PETER C. COHEN
CHARLSON BREDEHOFT, P.C.
11260 Roger Bacon Drive
Suite 201
Reston, Virginia 20190
(703) 318-6800

Counsel for Petitioner

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DECIDED MAY 14, 2004

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 03-1559

AARON C. JAMES,

Plaintiff-Appellant,

v.

BOOZ-ALLEN & HAMILTON, INCORPORATED,

Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (CA-02-1496-A)

Argued: February 25, 2004

Decided: May 14, 2004

Before WILKINSON, TRAXLER, and SHEDD, Circuit Judges.

Appendix A

OPINION

WILKINSON, Circuit Judge:

Aaron C. James appeals the district court's decision to grant summary judgment in a Title VII case to his former employer Booz-Allen & Hamilton, Inc. ("BAH"). This case centers on the reassignment of James from his role as Project Manager for BAH's contract with the Washington Metropolitan Area Transit Authority ("WMATA"). James continued to serve as a BAH Senior Associate, but he was asked to focus on outside marketing and business development opportunities for the company, while continuing to work on the WMATA contract. This role was consistent with preexisting responsibilities and goals that were laid out in his job description and annual evaluations. James continued to perform professional-level work, received a raise and a sizable bonus, and remained on course toward future promotion. We agree with the district court that the reassignment did not satisfy the threshold Title VII requirement of an adverse employment action, and thus affirm the dismissal of the action.

I.

Appellant James is an African American male and an electrical engineer with more than twenty-years experience in urban rail transportation. From October 1988 to May 1994, James worked for the Transportation Practice Group of BAH. In 1994 he voluntarily left BAH. Two years later, he was recruited to return and rehired as a Senior Associate Level IV, a promotion from his previous position. James' job

description envisioned his working multiple years as a Senior Associate and assuming a variety of roles.

From 1996 to February, 1999, James served as the Project Manager for BAH's contract with WMATA. Under this contract BAH provided engineering services to prepare for and oversee the procurement of new rail cars for the Metro system. Gary Schulman directly supervised James and served as the BAH Principal in charge of the WMATA project which James managed. Ghassan Salameh, as a BAH Vice-President and the head of the Transportation Group, also oversaw James. During the time that James managed the WMATA project, WMATA's expanding needs caused BAH's contract revenues to grow from approximately $1 million to $10 million annually. James eventually assumed responsibility for supervising a group of twenty-five to thirty employees who worked on the WMATA contract.

James' Title VII complaint focuses on BAH's decision to reassign him in February 1999 and on his subsequent annual performance evaluation. James received mixed evaluations that included both praise and criticism throughout his tenure at BAH. James received a rating of "effective" in his 1996-1997 annual BAH evaluation. This evaluation noted that James needed to improve his personal time management practices and the timeliness of work delivery, to refine his client handling skills, and to build strong relationships with key WMATA officials. James received the highest rating of "excellent" in his 1997-1998 evaluation. But this evaluation noted difficulties in James' relationship with his WMATA counterpart, Ray Stoezer, which some reviewers attributed to James' being "too administratively focused and rigid."

Appendix A

The evaluation directed James to expand his role in developing BAH's transportation practice by cultivating new clients and business opportunities.

During the spring of 1998, BAH's responsibilities under the WMATA contract greatly increased when WMATA contracted with a foreign firm to build a new series of subway cars. Simultaneously, WMATA officials voiced concerns to Salameh about BAH's level of support for the contract. On June 5, 1998, James responded to Salameh's request for input on how to improve BAH's performance by writing a memo that largely attributed BAH's problems to the shortcomings of his counterpart, WMATA's Stoezer. Salameh subsequently met with WMATA's Deputy General Manager and discussed how to resolve WMATA's concerns. On July 30, 1998, Salameh submitted a proposal to WMATA to provide additional staff support, and subsequently hired Richard Trabucco to serve as BAH's direct liaison with Stoezer, so that James could focus on his managerial duties.

In September, 1998, James bypassed established channels of communication with the client and discussed parts of the WMATA contract with a WMATA senior executive without notifying Stoezer or David Tarantino, the WMATA Contracting Officer responsible for the project. Tarantino responded with a letter sharply criticizing James' conduct. James' supervisor Gary Schulman did not fire or reassign James after this incident. Instead, Schulman apologized to WMATA officials for any misunderstandings, and proposed a series of meetings and other measures to avoid future miscommunication.

Appendix A

Over the next several months, Schulman and Salameh continued to receive feedback from WMATA officials and BAH workers about shortcomings in the technical depth, support, and speed of turnaround of the consulting work that James oversaw. These complaints focused on the failures of an internet-based document control system, delays in laying out an inspection plan for the cars and in lining up qualified personnel for the inspections, and unsatisfactory draft specifications for an overhaul of WMATA cars.

On December 14, 1998, WMATA's Deputy General Manager Chuck Thomas sent a letter to Salameh reiterating that WMATA wanted an organizational structure with a single point of contact. This letter noted that "[t]o date, a major time-consuming problem for the WMATA PM [Stoezer] has been associated with obtaining timely and reliable performance from the BAH engineering support staff. This situation appears to be approaching resolution and the BAH engineering and program support team performance has been improving since the arrival of Mr. Richard Trabucco." The district court made reference to this letter from the client in finding that BAH had a legitimate business purpose in reassigning James.

In January 1999, WMATA and BAH officials discussed a new organizational chart for the WMATA contract in which James would retain a broad coordination and oversight role as "Director of Projects." But BAH's Program Auditor Burt and BAH's liaison to WMATA Trabucco reported to James' supervisors, Salameh and Schulman, that WMATA officials continued to have concerns about both BAH's performance under the contract and BAH's management structure. Given

these reports, documented client concerns, and a history of personal difficulties between James and his client counterparts, Schulman and Salameh decided to reassign James.

On February 5, 1999, BAH reorganized the project and hired Karl Berger, a white male, to head the WMATA contract. James was asked to focus on his preexisting marketing and business development objectives to identify and acquire new clients and new opportunities for BAH. During this time James was no longer in a managerial role, but he continued to work as a staff member on parts of the WMATA contract. This allowed James to continue to have billable hours, even while he focused his efforts on cultivating new business opportunities for BAH.

From the time of James' reassignment in February, 1999 to his resignation in July, James remained a Senior Associate Level IV. He received a "highly effective" rating on his next annual evaluation, a five percent salary increase, and a $15,000 bonus. This "highly effective" rating was lower than the "excellent" rating he received the year before, but it was higher than the "effective" rating he received in 1997.

In March 1999, one month after his reassignment, James founded an independent minority contractor business under the name of James Transportation Engineering Consultants. He also applied to a BAH competitor to serve as a full-time subcontractor, a position he eventually accepted immediately prior to his resignation from BAH in July 1999. On March 26, 1999, James filed a charge of race discrimination against BAH with the Equal Employment Opportunity Commission

and Prince George's County Human Relations Commission ("PGCHRC"), alleging that he had been treated differently than similarly situated white employees. After an investigation, the PGCHRC dismissed the charge as unsubstantiated.

On October 18, 2000, James filed suit in the district court for the District of Columbia alleging a discriminatory demotion and a new claim that his April 1999 annual evaluation of "highly effective" was tainted by racial bias. On March 14, 2002, James amended his complaint and dropped the allegations concerning his 1998-1999 performance appraisal. However, James continued to rely extensively on this evaluation in his brief as evidence that he faced adverse employment action. The case was later transferred to the Eastern District of Virginia, and after discovery, briefing, and oral argument, the district court granted BAH's motion for summary judgment.

II.

The district court found that James had failed to establish a prima facie case of a Title VII or Section 1981 violation. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). The court held that James had satisfied three of the four elements of a prima facie case: James was a member of a protected class, was qualified for the position in question, and was replaced by a white individual. But the district court determined that James failed to produce evidence that BAH had taken adverse employment action against him. The court concluded:

> There was no demotion. There was a transfer of responsibilities. The man's salary was not affected. He received his bonus. He still had professional-level

> work. He was still, if he wanted to be, on track for promotion. There simply is not in this record the adverse action that would satisfy that element.

James challenges this holding and contends that BAH did take adverse employment actions.

We review the district court's grant of summary judgment de novo. *See Higgins v. E.I. DuPont de Nemours & Co.*, 863 F.2d 1162, 1167 (4th Cir. 1988). And we shall review briefly at the outset the settled principles in our circuit on adverse employment actions. Title VII of the Civil Rights Act of 1964 prohibits an employer from "discriminat[ing] against any individual *with respect to his compensation, terms, conditions, or privileges of employment*, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1) (emphasis added). Title VII also makes it unlawful for an employer "to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or *otherwise adversely affect* his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(2) (emphasis added).

Regardless of the route a plaintiff follows in proving a Title VII action, *see Hill v. Lockheed Martin Logistics Management, Inc.*, 354 F.3d 277, 284-85 (4th Cir. 2004) (en banc),[1] the

1. James must satisfy the same elements to establish a prima facie case of racial discrimination under either Title VII or 42 U.S.C. § 1981. *See Thompson v. Potomac Electric Power*, 312 F.3d 645, 649 n.1 (4th Cir. 2002); *Gairola v. Virginia Dep't of Gen. Servs.*, 753 F.2d 1281, 1285 (4th Cir. 1985).

existence of some adverse employment action is required. This court has set forth clearly what constitutes an adverse employment action. An adverse employment action is a discriminatory act which "adversely affect[s] 'the terms, conditions, or benefits' of the plaintiff's employment." *Von Gunten v. Maryland*, 243 F.3d 858, 865 (4th Cir. 2001) (quoting *Munday v. Waste Mgmt. of North America, Inc.*, 126 F.3d 239, 243 (4th Cir. 1997)).[2] "Conduct short of 'ultimate employment decisions' can constitute adverse employment action." *Id.* at 865.

The mere fact that a new job assignment is less appealing to the employee, however, does not constitute adverse employment action. *Von Gunten*, 243 F.3d at 868. A "reassignment can only form the basis of a valid Title VII claim if the plaintiff can show that the reassignment had some significant detrimental effect." *Boone v. Goldin*, 178 F.3d 253, 256 (4th Cir. 1999). "[A]bsent any decrease in compensation, job title, level of responsibility, or opportunity for promotion, reassignment to a new position commensurate with one's salary level does not constitute an adverse employment action even if the new job does cause some modest stress not present in the old position." *Id.* at 256-57; *see also Taylor v. Virginia Dep't of Corrs.*, 177 F. Supp. 2d 497, 504-05 (E.D. Va. 2001).

2. *Von Gunten* entailed the interpretation of the anti-retaliation provision of Title VII, *see* 42 U.S.C. § 2000e-3, rather than the employment discrimination provision in 42 U.S.C. § 2000e-2 involved in this case. *See Von Gunten*, 243 F.3d at 863 n.1. However, *Von Gunten*'s discussion of what constitutes adverse action applies here as "'[i]n the absence of strong contrary policy considerations, conformity between the provisions of Title VII is to be preferred.'" *Id.* at 863 n.1 (quoting *Ross v. Communications Satellite Corp.*, 759 F.2d 355, 365 (4th Cir. 1985)).

Appendix A

III.

James alleges a litany of adverse changes to the terms and conditions of his employment that began with his removal as Project Manager for the WMATA contract. These allegations fall into three categories: a claim of denial of opportunities for promotion and professional development, a challenge to James' 1998-1999 performance evaluation, and a claim of constructive discharge.

A.

James asserts that his potential for promotion and professional development was stymied by his reassignment in February 1999 and his subsequent treatment. He claims he was not considered for managing other projects and that because of that he was able to bill less. As a result of this lower billing, he claims that he would have been ineligible for future bonuses and that harassment about his low billing suggested that his job was in jeopardy. He asserts further that he was excluded from important meetings dealing with the WMATA project and excluded from a conference that a similarly situated white male was permitted to attend. James claims he was also denied the opportunity to regain his Project Manager position when his successor was reassigned after a few months. Instead, he alleges that high level BAH managers advised him to "lay low" and that he was never given an explanation for why BAH reassigned him or limited his subsequent opportunities.

It is clear that James found his new role and responsibilities with BAH less appealing, but that fact in and

of itself does not constitute adverse employment action. *Von Gunten*, 243 F.3d at 868. The question is whether there was a change in the terms or conditions of his employment which had a "significant detrimental effect" on his opportunities for promotion or professional development. *Boone*, 178 F.3d at 256. We must ask whether there was "a decrease in compensation, job title, level of responsibility, or opportunity for promotion." *Id.* at 256-57.

And it is here that James' case falls short. His lengthy list of complaints does nothing to impeach the district court's holding that he did not suffer an adverse employment action. It was significant to the district court, as it is to us, that James retained his position of Senior Associate and received the same pay, benefits, and other terms and conditions of employment. He even received a five-percent raise after the reassignment and a $15,000 bonus, the largest performance bonus he had ever received with BAH. He was reassigned to cultivate marketing and business development opportunities for BAH, which was a preexisting area of responsibility. And success in this area of responsibility would enhance his future chances for promotion.

James' claim that he was excluded from "important meetings" lacks specificity, and he fails further to substantiate how the alleged exclusions, whatever they might have been, adversely affected him. Similarly, the alleged harassment that James faced about his level of non-billables amounts to nothing more than his being asked to comply with a BAH policy that employees receive approval for high amounts of non-billable hours. Since James' non-billable marketing and business development activities were part of his job

description and exactly what his supervisors asked him to do, it is hard to imagine how this could have an adverse effect.

In sum, an employee's dissatisfaction with this or that aspect of work does not mean an employer has committed an actionable adverse action. And speculation about the future adverse consequences of a reassignment may not rise to the level of a genuine dispute. Inasmuch as James departed the company before he even came up for promotion, we are left to guesswork and conjecture as to what his prospects would have been. James' speculations about the impact of his reassignment on his opportunities for professional development are merely that—stark assertions that are not sufficient to survive summary judgment. *See Bryant v. Bell Atlantic Maryland, Inc.*, 288 F.3d 124, 135 (4th Cir. 2002).

B.

James claims that his 1998-1999 annual evaluation, if not an adverse employment action in itself, is nonetheless indicative of the adverse consequences he suffered generally. James argues that BAH deviated from its ordinary practice by having a non-supervisor, Mike Cannell, perform his annual evaluation in 1999. He claims this performance review included false allegations, which led to the lowering of James' performance review from the "excellent" rating that James received the previous year to a "highly effective" rating. James asserts that this lower rating prevented him from being considered for a promotion, in addition to denying him opportunities for bigger bonuses and greater responsibilities.

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A "downgrade of a performance evaluation *could* effect a term, condition, or benefit of employment" if it has a tangible effect on the terms or conditions of employment. *Von Gunten*, 243 F.3d at 867 (citing *Spears v. Missouri Dep't of Corr. & Human Res.*, 210 F.3d 850, 854 (8th Cir. 2000)). However, a poor performance evaluation "is actionable only where the employer subsequently uses the evaluation as a basis to detrimentally alter the terms or conditions of the recipient's employment." *Spears*, 210 F.3d at 854. An evaluation merely causing a loss of prestige or status is not actionable. *Cossette v. Minnesota Power & Light*, 188 F.3d 964, 972 (8th Cir. 1999).

Here James' rating of "highly effective" was admittedly one level below his previous annual evaluation. Yet it was one level higher than he had received two years earlier. In fact, this latest evaluation was generally positive and consistent with his earlier evaluations, and James received both a pay-raise and a bonus. There is nothing in the record to suggest that BAH used "the evaluation as a basis to detrimentally alter the terms or conditions of the recipient's employment." *Spears*, 210 F.3d at 854. James' claim that this evaluation took him off track for promotion and formed a basis for denying him opportunities is again conjectural. *Sylvia Dev. Corp. v. Calvert County*, 48 F.3d 810, 818 (4th Cir. 1995). James overlooks the fact that, at the time of his 1998-1999 evaluation, BAH was in the midst of a transition to a system in which annual evaluations were conducted by an individual who did not supervise the employee. James also fails to offer any support for his claims that the evaluation involved falsehoods, as opposed to mere disagreements over his performance.

Appendix A

C.

James next alleges that BAH's actions led to irreparable damage to his reputation and that he was subject to constructive discharge. He asserts that Bill Brooks, then a Vice President and Partner at BAH, told James that James' supervisor Ghassan Salameh had expressed critical comments about James in a partners' meeting that discussed promotions and that Brooks suggested that James start looking for another job. Therefore, James claims he was subject to the ultimate adverse action of constructive discharge, which led him to resign on July 31, 1999.

To establish constructive discharge, a plaintiff must be able to show that his former employer "deliberately ma[de] an employee's working conditions intolerable, and thereby force[d] him to quit." *Bristow v. Daily Press, Inc.*, 770 F.2d 1251, 1255 (4th Cir. 1985). "Demotion can constitute a constructive discharge, especially where the demotion is essentially a career-ending action or a harbinger of dismissal." *Carter v. Ball*, 33 F.3d 450, 459 (4th Cir. 1994). However, mere "[d]issatisfaction with work assignments, a feeling of being unfairly criticized, or difficult or unpleasant working conditions are not so intolerable as to compel a reasonable person to resign." *Id.* at 459. Even a " 'slight decrease in pay coupled with some loss of supervisory responsibilities,' is insufficient evidence of constructive discharge." *Id.* at 459 (quoting *Jurgens v. EEOC*, 903 F.2d 386, 391-92 (5th Cir. 1990)).

We view the alleged statement by then-BAH Partner Bill Brooks about James' lack of prospects for promotion in the

light most favorable to James. Even so, the significance of the comment is limited by the fact that it comes from a single BAH partner who had no role in supervising James or in determining his prospects for promotion. This evidence thus falls far short of establishing the existence of "a calculated effort to pressure [James] into resignation through the imposition of unreasonably harsh conditions, in excess of those faced by his co-workers." *Bristow*, 770 F.2d at 1255. James claims that Brooks' statement, coupled with all of the additional slights he faced, amounted to irreparable damage to his reputation that left him with no choice but to leave. However, the evidence suggests that James enjoyed a number of positive benefits following his reassignment, and he certainly has produced no evidence that he faced the kind of harsh working conditions that would compel any reasonable employee to quit.

D.

Our holding here is in line with our decisions in *Boone* and *Von Gunten*, which failed to find adverse employment actions in situations where employees faced reassignments, changes in working conditions, and negative performance evaluations. *See Von Gunten*, 243 F.3d at 868; *Boone*, 178 F.3d at 256. It is obvious that Congress in Title VII did not want to tolerate invidious discrimination on the part of companies that merely falls short of the ultimate sanction of dismissal. At the same time, the language of the statute requires the existence of some adverse employment action to establish a Title VII violation. The statute's wording makes clear that Congress did not want the specter of liability to hang over every personnel decision. In awarding summary

judgment on this record, the district court properly struck the balance in favor of the employer's need to enjoy some flexibility in matching an employee's tasks to his own talents and the company's business requirements.[3]

IV.

For the foregoing reasons, the judgment of the district court is

AFFIRMED.

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3. James also argues that race was the motive for his reassignment and the alleged setbacks that he faced. BAH asserts that it reassigned James because of documented problems in the WMATA project which James had overseen as Project Manager and longstanding concerns about his relationship with his WMATA counterparts. The district court did not directly rule on this argument, but noted: "if you are the commander of a group and there's a problem with the group, the commander may be fine, but if the group isn't working out, it's not unreasonable for an employer to reshuffle the whole arrangement." It further stated there was no "smoking gun or any suggestion that the plaintiff's race played any factor in the decisions that [BAH] made about [James'] employment." In the absence of any adverse employment action and the absence of any direct ruling below on this ground, we decline to address this argument as well.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION DATED AND FILED APRIL 4, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA,
Alexandria Division

Civil Action No. 02-1496-A

AARON C. JAMES,

Plaintiff,

v.

BOOZ ALLEN HAMILTON INC.,

Defendant.

ORDER

For the reasons stated in open court, defendant's Motion for Summary Judgment is GRANTED, and it is hereby

ORDERED that judgment be and is ENTERED in favor of defendant.

The Clerk is directed to enter judgment in favor of defendant pursuant to Fed. R. Civ. P. 58, and to forward copies of this Order to counsel of record.

Appendix B

Entered this 4th day of April, 2003.

s/ Leonie M. Brinkema
Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

APPENDIX C — EXCERPTS FROM TRANSCRIPT OF MOTION HEARING DATED APRIL 4, 2003

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Civil Action No. 02-1496-A

AARON C. JAMES, SR.,

Plaintiff,

vs.

BOOZ-ALLEN & HAMILTON, INC.,

Defendant.

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

* * *

[Commencing at page 20]

* * *

THE COURT: I've heard enough, and I've gone through this record. It's too long a record for the reasons I said earlier. Despite your eloquent argument to the contrary, I do [21] not find on this record that the plaintiff has been able to make out a prima facie case under *McDonnell Douglas*.

Appendix C

He is a member of the protected class. That's not disputable. And I do feel that he was qualified for the position. I realize that might be harshly disputed, but it looks as though if there were things that were a problem, it was personality issues. And I'm going to find that in favor.

He was replaced by white individuals, although the jobs were reconstructed, but the critical and the fourth factor that the plaintiff cannot make -- and I have not heard anything in the argument this morning that changes my view -- is that under the facts of this case, there was no adverse action taken against him as defined under the standards in the Fourth Circuit.

There was no demotion. There was a transfer of responsibilities. The man's salary was not affected. He received his bonus. He still had professional-level work. He was still, if he wanted to be, on track for promotion. There simply is not in this record the adverse action that would satisfy that element.

In addition, on the issue of whether there was a -- I think that the plaintiff -- the defendants have come forward with a nondiscriminatory explanation. And people mischaracterize things all the time without it being materially wrong, and that is, if you are the commander of a group and there's a problem with the group, the commander may be fine, but if the group isn't [22] working out, it's not unreasonable for an employer to reshuffle the whole arrangement.

Mr. Thomas's letter of December 14 is clear that there were problems with timeliness and reliability of the

engineering team. I mean, it's in writing. Forgetting people's memories and oral statements, you've got at least that letter. And it's no question that Mr. James headed the organization or the project at that point.

Now literally speaking, that may not be a criticism of Mr. James, but it is a criticism of the project he was managing, and under that kind of evidence, it is not unreasonable for an employer to make a change in the employment structure.

I just do not see any smoking gun or any suggestion that the plaintiff's race played any factor in the decision that the defendant made about his employment. Therefore, I'm going to grant the motion for summary judgment, and that is the ruling of the Court. Thank you.

I believe that completes the docket for this morning, so we'll recess court for the day.

(Which were all the proceedings had at this time.)

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DENYING PETITION FOR REHEARING FILED JUNE 15, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-1559
CA-02-1496-A

AARON C. JAMES,

Plaintiff - Appellant

v.

BOOZ, ALLEN & HAMILTON, INCORPORATED,

Defendant - Appellee.

On Petition for Rehearing and Rehearing En Banc

The appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

Appendix D

Entered for a panel comprised of Judge Wilkinson, Judge Traxler, and Judge Shedd.

For the Court,
/s/ Patricia S. Connor
CLERK